Supreme Court of the United States

No. 11.

OCTOBER TERM, 1939.

CLARA SCHNEIDER,
Petitioner,

vs.

THE STATE (Town of Irvington),
Respondent.

CERTIORARI FROM
NEW JERSEY COURT OF ERRORS AND APPEALS.

RESPONDENT'S BRIEF.

MEYER Q. KESSEL,
Attorney for Respondent.

JOSEPH C. BRAELOW,
Of Counsel.

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CITATIONS.

Supreme Court of the United States

No. 11.

October Term, 1939.

Clara Schneider, Petitioner, *vs.* The State (Town of Irvington), Respondent.	*Certiorari* from New Jersey Court of Errors and Appeals.

RESPONDENT'S BRIEF.

The Opinions of the Courts Below.

The Opinion of the Essex County Court of Common Pleas is unreported and appears at page 11 of the Record. The Opinion of the New Jersey Supreme Court is reported at 120 New Jersey Law 460 and appears at page 21 of the Record. The Opinion of the New Jersey Court of Errors and Appeals is reported at 121 New Jersey Law 542 and appears at page 25 of the Record.

Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked by petitioner under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

Statement.

The stipulation (R. 5-7) provides in its introduction "that the following testimony and documents shall be considered as having been presented in evidence before" the Court of Common Pleas of Essex County.

The petitioner was convicted of violating the canvassing ordinance of the Town of Irvington, New Jersey. The evidence shows that the petitioner, Clara Schneider, on the day alleged in the complaint, *canvassed from house to house* in the Town of Irvington, New Jersey, and offered to leave, and did leave, books or booklets, and solicited or received contributions in the form of money; that the petitioner did not apply for a permit from the Police Department in conformance with the ordinance (R. 8-10).

Federal Questions Presented.

The federal questions presented here for review are as follows:

Whether a municipal ordinance, enacted in the proper exercise of the police power in furtherance of the public welfare and order, and conceded to be reasonable, may require persons to secure a permit (for which there is no charge), to canvass from house to house for the sale of printed matter in exchange for money, without violating the due process clause of the Fourteenth Amendment.

It is contended that the ordinance of the Town of Irvington does not abridge petitioner's rights of freedom of speech and the press or her rights of freedom of worship and religious liberty as guaranteed by the due process clause of the Fourteenth Amendment.

ARGUMENT.

POINT ONE.

Since the ordinance is valid on its face and petitioner failed to seek a permit under it, she is not entitled to contest its validity in answer to the charge against her, nor may she complain of anticipated improper or invalid action in administration.

In *Lovell* v. *City of Griffin*, 303 U. S. 444, this court expressly acknowledged the above principle, but accepted jurisdiction because the ordinance under consideration therein was *void on its face*. The ordinance *sub judice* is not only *not void on its face*, but petitioner *concedes* that the ordinance is valid on its face. In no argument in her brief does petitioner contend that the ordinance itself is void. Her sole contention is that as "construed and applied" the ordinance unduly restricts *her*. Throughout her brief, petitioner objects to the ordinance *only* as "construed and applied".

At no time did, nor does petitioner now object that the ordinance is an unreasonable exercise of the police power. She admits that it is reasonable, but not "as construed and applied to her". In her brief in the New Jersey Supreme Court, the defendant said:

> "• • • We recognize that in a few cases involving Jehovah's witnesses this court has upheld ordinances such as the one in question as being a reasonable exercise of the police power. We do not question such ruling" (R. 21).

This petitioner *did not apply* for a permit under the ordinance. From the statements made by her throughout

these proceedings, as to her character and the freedom from fraud of her project, it would appear that she would have, without doubt, been entitled to such a permit. At no time has respondent claimed that petitioner was not entitled to a permit under the ordinance, nor that her character was anything but exemplary. But since the petitioner did not apply for a permit, and the principle is well established that when a statute, valid on its face, requires the issue of a permit or license as a condition precedent to carrying on a business or vocation, one who is within the terms of the statute, but has failed to make the required application, is not at liberty to complain because of his anticipation of improper or invalid action in administration nor to contest its validity in answer to the charge against him.

Lovell v. *Griffin, supra;*
Smith v. *Cahoon*, 283 U. S. 553;
Gundling v. *Chicago*, 177 U. S. 183;
Lehon v. *Atlanta*, 242 U. S. 53.

It is therefore submitted that this petitioner is not entitled to contest the validity of the ordinance in answer to the charge against her, and that the judgment be affirmed.

POINT TWO.

The Irvington ordinance, of itself and as applied to the acts of the petitioner, is constitutional and valid, because it is a reasonable and proper exercise of the police power in furtherance of the public welfare, and the Constitutional rights of freedom of speech and the press are properly subject to the same. The case of *Lovell* v. *Griffin*, 303 U. S. 444, distinguishable and inapplicable.

The ordinance of the City of Griffin, Ga. was declared void by this Court in *Lovell* v. *Griffin, supra,* because it subjected the freedom of the press to the power of censorship. It placed the power to license in the hands of the city manager without any restriction thereon. But a comparison of the two ordinances reveals immediately that the ordinance of the Town of Irvington satisfies every objection raised by this Court. Our ordinance contains all the limitations found lacking in the City of Griffin ordinance.

In the Griffin ordinance the practice of distributing was prohibited without the written permission of the city manager. No legal standard or yardstick was provided to govern his exercise of that authority. Our ordinance provides that Chief of Police *shall refuse a permit only where the applicant is "not of good character or that he is canvassing for a project not free from fraud"* (R. 9).

Petitioner claims in her brief (petitioner's brief, p. 13), that there is no difference between the discretionary powers granted in the two ordinances, saying:

> "* * * there is no material difference between the discretionary power given to the police under this ordinance and that given to the city manager under the Griffin (Ga.) ordinance * * *."

She says further on said page,

> "It is left to the department's discretion in granting permission based on its determination of what it considers 'good character' or 'fraud'."

But we submit that there is a very material difference, and that is the establishment of a legal yardstick by which the administration's authority is to be guided and restrained. Such a provision was sustained by this Court in the interest of the public welfare in *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, at page 552:

> "We turn back, therefore, to consider the more specific objections to the law. The basis of them is, as we have seen, the power conferred upon the commissioner, which is asserted to be arbitrary. The objection is somewhat difficult to handle. It centers in the provision that requires the commissioner, as a condition of a license, 'to be satisfied of the good repute in business of such applicant and named agents,' and in the power given him to revoke the license or refuse to renew it upon ascertaining that the licensee 'is of bad business repute, has violated any provision of the act, or has engaged or is about to engage, under favor of such license, in illegitimate business or fraudulent transactions.' It is especially objected that, as to these requirements, no standard is given to guide or determine the decision of the commissioner. Therefore, it is contended that the discretion thus vested in the commissioner leaves "'room for the play and action of purely personal and arbitrary power.'"

We are a little surprised that it should be implied that there is anything recondite in a business reputation or its existence as a fact which should require much investigation. If in special cases there may be

controversy, those cases the statute takes care of; an adverse judgment by the commissioner is reviewable by the courts. Sec. 6373-8. So also as to other judgments.

Besides, it is certainly apparent that, if the conditions are within the power of the state to impose, they can only be ascertained by an executive officer. Reputation and character are quite tangible attributes, but there can be no legislative definition of them that can automatically attach to or identify individuals possessing them, and necessarily the aid of some executive agency must be invoked. The contention of appellees would take from government one of its most essential instrumentalities, of which the various national and state commissions are instances. But the contention may be answered by authority. In Gundling *v.* Chicago, 177 U. S. 183, 44 L. ed. 725, 20 Sup. Ct. Rep. 633, an ordinance of the city of Chicago was passed on which required a license of dealers in cigarettes, and, as a condition of the license, that the applicant, if a single individual, all of the members of the firm, if a copartnership, and any person or persons in charge of the business, if a corporation, should be of good character and reputation, and the duty was delegated to the mayor of the city to determine the existence of the conditions. The ordinance was sustained. To this case may be added Red 'C' Oil Mfg. Co. *vs.* Board of Agriculture, 222 U. S. 380, 394, 56 L. ed. 240, 245, 32 Sup. Ct. Rep. 152, and cases cited; Mutual Film Corp *v.* Industrial Commission, 236 U. S. 230, 59 L. ed. 552, 35 Sup. Ct. Rep. 387, Ann. Cas. 1916C, 296; Brazee *v.* Michigan, 241 U. S. 340, 341, 60 L. ed. 1034, 1035, 36 Sup. Ct. Rep. 561. See also Reetz *v.* Michigan, 188 U. S. 505, 47 L. ed. 563, 23 Sup. Ct. Rep. 390; New York *ex rel.* Lieberman *v.* Van De Carr, 199 U. S. 552, 50 L. ed. 305, 26 Sup. Ct. Rep. 144.

> The discretion of the commissioner is qualified by his duty, and besides, as we have seen, the statute gives judicial review of his action. Pending such review, we must accord to the commissioner a proper sense of duty and the presumption that the functions intrusted to him will be executed in the public interest, not wantonly or arbitrarily to deny a license to or take one away from a reputable dealer (Plymouth Coal Co. *v.* Pennsylvania, 232 U. S. 531, 545, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359)."

Under the laws of the State of New Jersey, any action of a municipal administration official is subject to review by *certiorari* or *mandamus*, which further qualifies his action.

The petitioner's argument, therefore, that there is no material difference between the discretionary powers granted by the two ordinances, is untenable.

Next it should be noted that in its opinion in *Lovell* v. *Griffin, supra*, at page 451, this Honorable Court said:

> "The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation 'either by hand or otherwise.' There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the city manager."

But the present ordinance of the Town of Irvington is limited in mode and purpose to the maintenance of public

order and the preventing of molestation of the inhabitants. The ordinance *does not prohibit*, it does not unlawfully infringe upon the constitutional right of freedom of speech and the press; *it only regulates*. Actually and on the face of the ordinance, it is apparent that it is only a reasonable exercise of the police power to protect the inhabitants of the community. The administrative officer may deny a permit only to persons not of good character or canvassing for a project not free from fraud. As hereinabove argued, such regulation is not arbitrary, but merely a reasonable and proper exercise of the police power.

In the case of *City of Pittsburgh* v. *Ruffner*, 134 Pa. Super. 192, 4 Atlantic (2d) 224, 228, a similar ordinance was under review at the instance of the same sect of which petitioner is a member, and the Superior Court of Pennsylvania said:

> "Nor does the ordinance unlawfully infringe upon the constitutional right of freedom of the press. This appellant may, notwithstanding this ordinance, freely print and communicate his thoughts and opinions and may freely speak, writ and print on any subject, 'being responsible for the abuse of that liberty,' and he may, subject to reasonable regulation, freely distribute the same; but that furnishes no warrant for upholding his *unlimited and unrestricted* right to enter the homes and offices of others to *sell* to them the books and pamphlets he may have written or books and pamphlets expressive of his thoughts and opinions. The case of Lovell *v.* Griffin, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949, on which appellant relies, declares no such doctrine."

And concerning the sale of books and pamphlets, the Court continued:

"The present ordinance relates only to the hawking and peddling of merchandise and the selling of goods and merchandise from house to house, or in buildings within the City limits. Its purpose is reasonable and salutary—the protection of the public against fraud and imposition. That books and pamphlets may be merchandise cannot be doubted: and that vendors of books and printed material may be unworthy and unscrupulous and may deceive and defraud the public is too well known to need extensive reference. We have had in this court a number of cases where advantage was taken of householders and business men by unscrupulous book agents. The latest case which comes to our recolleciton is Ashland Towson Corp. *v.* Kasunic, 110 Pa. Super. 496, 168 A. 502. And the case of Federal Trade Commission *v.* Standard Education Society, 302 U. S. 112, 58 S. Ct. 113, 82 L. Ed. 141, decided in 1937, is proof positive that the selling of books by agents is not wholly free from deceitful practices."

The other provisions of the ordinance of the Town of Irvington are neither "burdensome nor inquisitorial". They require merely that such persons make themselves known to the police, obtain and carry means of identification, and submit to photographing and fingerprinting. *There is no fee charged for the permit.* The information and identification thus furnished provides the police with a ready means of check-up, and aids in preventing frauds, burglaries and other crimes. It assists in the prevention and detection of crimes by persons who under the guise of canvassing, soliciting or distributing from house to house, may use such pretense or entrance for ulterior or improper purposes. Canvassing is limited to daylight hours between 9 A. M. and 5 P. M. to prevent calling upon

people at their homes at unreasonable hours, and in furtherance of their protection. The group of which petitioner is a member should no more object to the burden of obtaining a reasonable canvassing permit than they do to take out automobile licenses in order to do such canvassing, and make application for incorporation franchise licenses and pay the necessary fees in order to conduct their entire, allegedly religious operations.

A police regulation, obviously intended as such, and not operating unreasonably beyond the occasions of its enactment, is not invalid simply because it may affect incidentally the exercise of some right guaranteed by the Constitution. In all matters within the police power, some compromise between the exigencies of public health, safety and welfare and the full exercise of their rights by individuals must be reached. The test in such cases is whether the regulation in question is a bona fide exercise of the police power or an arbitrary and unreasonable interference with individuals under the guise of police regulations. It is strenuously argued by respondent that our ordinance is obviously a police regulation enacted for the public welfare, and does not operate beyond the occasions of its enactment. It is *conceded to be a reasonable exercise of the police power*, and as applied to this petitioner is not an arbitrary or unreasonable interference with her constitutional rights. The compromise reached is a fair one, and her right must yield to the right of the general public; otherwise government must cease to function.

It is universally recognized that the constitutional rights of individuals are subject to a proper exercise of the police power, whether the same be exercised by a state or the United States. Mr. Justice Field, speaking for the Su-

preme Court of the United States in *Barbier* v. *Connolly*, 113 U. S. 27, 31, commented in the following language:

> "But neither the amendment (Fourteenth Amendment), broad and comprehensive as it is, nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."

And again, in *Mugler* v. *State of Kansas*, 123 U. S. 623, 664, it was said:

> "It cannot be supposed that the States intended, by adopting that Amendment (Fourteenth), to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community."

The police power, however, must be exercised in a reasonable manner and bear a direct and substantial relation to the public welfare. We submit that this is precisely what the ordinance of the Town of Irvington does.

Contrary to the assertions and generalizations made by petitioner (petitioner's brief, p. 33), that the courts of the State of New Jersey have permitted "unusual, strange and un-American" things to come to pass, reported cases clearly show that our courts are just as alert as this Honorable Court to detect and prevent violations of constitutional guarantees. Ordinances in New Jersey which contain the violations found to exist in the case of *Lovell* v. *Griffin, supra,* have been uniformly condemned by the New Jersey courts prior to that decision.

In the cases of *Borough of Bergenfield* v. *Daniel E. Morgan and Thurston Hilldring* (Jehovah's Witnesses), decided March 21, 1934 by the New Jersey Supreme Court in a memorandum opinion filed but not reported, an ordinance was under consideration which provided:

> "Sec. 36. Distributing handbills, pamphlets, advertising matter, or any other literature in or along any public street or public place or from door to door of private houses, stores, or apartment houses in the Borough without the permission of the Police Department."

Justice Bodine in his opinion said:

> "The very recent case of Summit *v.* Grampp, decided by the Supreme Court, opinion by Justice Case, filed December 28, 1933, is dispositive of the matter. He said:
>
> > 'By the terms of the ordinance the permit is to issue only upon the written approval of the chief of police, who is given absolute discretion in granting or withholding his approval without any determining factors other than his own impulses. The reservation in an ordinance of discretionary powers to a public officer to give to one and withhold from another the privilege of violating the ordinance is condemned by our cases. South Orange *v.* Heller, 92 N. J. Eq. 506; Keavy *v.* Randall, 1 Misc. 311. No legislative authority is cited for such a provision. It is unreasonable that a chief of police, with no rule of determination except his own wishes, should determine who is and who is not to distribute advertisement.'
>
> The convictions are set aside."

It is further to be noted that in the assignments of error on appeal to this Honorable Court in *Lovell* v. *Griffin, supra* (Record, *Lovell* v. *Griffin*, p. 20, specification 1), it was contended:

> "• • • that said ordinance of the City of Griffin • • • was arbitrary, capricious, and unreasonable and set up a prohibition bearing no relationship to public health, morals or welfare or any other matter within the domain of the police power • • •."

Further quoting from the same Record, page 21, specification 4, the appellant therein contended:

> "• • • that the said ordinance fixed no rule for the guidance or control of the city manager of the City of Griffin in granting or refusing permits, and said ordinance did not set up any standard regulating the application of said ordinance to acts which are unmoral or against the peace, good order, and dignity of the state • • •."

That these contentions are entirely lacking either in the specifications of error assigned in the present case, or in the brief of petitioner, merely emphasizes that the distinction between the ordinance of the City of Griffin and the present ordinance of the Town of Irvington is recognized by petitioner and studiously avoided.

The ordinance of the Town of Irvington violates none of this petitioner's constitutional rights, and is a reasonable exercise by the Town of the police powers conferred upon it by the New Jersey statutes (Article 14, Section 2, Chapter 152, Laws of 1917), which provide:

> "Every municipality shall have power to make, enforce, amend and repeal such other ordinances,

regulations, rules and by-laws not contrary to the laws of this State or of the United States as they may deem necessary and proper for the good government, order, protection of persons and property, and for the preservation of the public health, safety and prosperity of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this act or by any law of this State."

POINT THREE.

The Irvington ordinance, of itself and as applied to the acts of petitioner, is constitutional and valid, because it is a reasonable and proper exercise of the police power in furtherance of the public welfare, and the Constitutional rights of freedom of worship and religious liberty are properly subject to the same.

All of the arguments hereinabove set forth relating to the right of reasonable regulation, as part of the police power, of the rights of freedom of speech and the press to the extent that public order and welfare demand, apply with equal reason and force to the right of freedom of worship and religion and need not be here repeated.

Denuded of all embellishment, the petitioner's argument that the ordinance of the Town of Irvington as construed and applied to her, violates her constitutional rights of freedom of worship and religion, may be stated and answered as three propositions as follows.

She claims first that to require her to *apply* for a permit is to compel her to do an act of disobedience to Almighty God, and would mean her destruction, as she thoroughly believes (petitioner's brief, pp. 24 and 29); therefore the ordinance is void as construed and applied to her.

To accede to this proposition would mean that while the ordinance may legally govern the action of all other persons it can have no application to her. She, as a member of her sect, is privileged and immune. By her refusal to apply for a permit, she maintains that the determination of the existence of her privileged status is for her alone and not the local administrative authority. If her right to determine when a law can be construed and applied to her and when not, is recognized in this case, then we can expect her and other members of her sect to demand this right of self determination of legality and construction in all other regulatory statutes.

In *Davis* v. *Beason*, 133 U. S. 333, 344, Mr. Justice Field cited the language used by Mr. Chief Justice Waite in *Reynolds* v. *United States*, 98 U. S. 145, 165, 166, as follows:

> "'. . . This being so, the only question which remains is whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So here,

> as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary, because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.' "

The answer to this contention of petitioner is that her religious beliefs are not necessarily supreme to the law of the land, because labeled religion. If in *practice* they conflict with legislation designed to protect the public welfare, safety and order, they must reasonably submit and conform for the common good.

Her second contention is that the law of the Bible as *interpreted* by the sect to which petitioner belongs, is supreme and that no mere municipal ordinance nor any law made by man may supercede that *interpretation*.

In her brief (Brief, p. 24, *et seq.*), petitioner justifies the above conclusion by a long series of logistic syllogisms quite obviously containing many premises based on opinion and her particular religious belief, and not on recognized fact or truth. There are a great many religions and innumerable sects in this country. A great many of them are founded on their individual interpretations of the Bible, and they far from agree with one another. If every one of those religious groups was permitted to act as "they thoroughly believed", fanaticism would supercede law and only chaos could result.

In the case of *Hamilton* v. *Regents of the University of California*, 293 U. S. 245, 268, Mr. Justice Cardoza said:

> "Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

But even assuming that the interpretation of the Bible as propounded by petitioner and "Jehovah's Witnesses", is the one and only true one, it still is subject to such reasonable regulation as public welfare and order require.

Lastly, petitioner claims and argues that by canvassing from house to house and selling pamphlets she is worshiping God and preaching the gospel, and to require her to obtain a permit to do that violates her constitutional right.

Here again the argument hinges on her individual interpretation of what worshiping God means. The petitioner is entitled to believe whatever she desires, but her beliefs in practice are subject to the rights of the public in general and the local governing authority must be permitted to regulate for the good of all. As this Court has stated in *Davis* v *Beason, supra,* page 342:

> "It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society. With man's

> relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

And continuing at page 345:

> "It is assumed by counsel of the petitioner that, because no mode of worship can be established, or religious tenets enforced, in this country, therefore any form of worship may be followed, and any tenets, however destructive of society, may be held and advocated, if asserted to be a part of the religious doctrines of those advocating and practicing them. But nothing is further from the truth. While legislation for the establishment of a religion is forbidden, and its free exercise permitted, it does not follow that everything which may be so called can be tolerated."

While giving serious consideration and patient answer to the apparently imposing argumentative edifice created by petitioner, we must not permit it to obscure the facts. Actually no one has interfered with petitioner's right to worship God as she pleases, actually no one has said or ordered that she may not canvass from house to house and sell her pamphlets and spread her interpretation of the gospel, actually no one has said or ordered that she may not have a permit to do these things. This entire mountain made of a mole hill results solely from petitioner's obstinate refusal to *apply* for a permit to canvass and not from any actual violation or threat of violation of her right of freedom of worship or religion.

In *Dziatkiewicz* v. *Maplewood*, 115 N. J. L. 37, 42, New Jersey Supreme Court, in passing upon the validity of a similar ordinance involving the same sect, Justice Perskie said:

> "• • • It would seem to this Court that men and women engaged in the lofty and idealistic work, as the prosecutors claim to have been engaged herein, i. e., of spreading their religious conceptions to the public at large, ought to be among the very first to submit to and comply with all reasonable regulations which, obviously, were enacted in the interest of the public health and safety and which regulations were designed for the good of the greatest number. There is no question here of prohibition; it is rather a simple question of reasonable police regulations; regulations which have for their purpose safeguards against those who are not so concerned with ideals and morals; a type, of which there are altogether too many, which resort to any guise, innocent or otherwise, in order to further their illegal schemes and objectives."

This Court has held by sustaining the opinions of the State courts that no constitutional guaranty of religious freedom is infringed by regulations requiring public school pupils to salute the flag, even though the refusal of such pupils be based on conscientious scruples. Those cases involved members of this same religious sect known as "Jehovah's Witnesses". The principle involved is identical with the one in the case *sub judice*.

Leoles v. *Landers* (1938) 302 U. S. 656 (dismissing appeal from 184 Ga. 580, 192 S. E. 218);

Hering v. *State Bd. of Education*, 303 U. S. 624 (dismissing appeal from 118 N. J. L. 566, 194 A. Rep. 177).

Petitioner, in her brief (p. 32), cites and quotes from the case of *Thomas* v. *City of Atlanta*, 1 S. E. (2d), 598, and attempts to use the language of that court, which petitioner quotes, in support of her argument. Petitioner neglects to set forth that the ordinance in the quoted case provided for the payment of a license fee of $60.00 for peddlers. The ordinance in no way was related to the exercise of the police power for the public welfare, but was enacted only for the purpose of raising revenue. Obviously, the Irvington ordinance and the one referred to in the *Thomas* case, are absolutely different. The case is not in point.

But it may be well in closing our reference to the above case, to state the thought of Judge MacIntyre, who specially concurred in the above opinion. We quote from page 599 of said case:

> "I concur in the result but not in all that is said in the opinion. A preacher or teacher of a religious sect, under some circumstances, may so sell books and literature dealing with his religious faith as to become a peddler."

In the interest of clarity only, respondent calls to the Court's attention that it is not stipulated, as claimed, that petitioner is an "ordained minister". The only reference thereto is contained in Exhibit S-2 (R. 23), which was the card carried by petitioner. But even if she is entitled to that designation, which we seriously question on the evidence presented, it alone does not exempt her from the provisions of the ordinance, nor to deny her exemption for that reason, does not violate her constitutional rights of freedom of worship and religious liberty. Likewise, an examination of petitioner's pamphlet entitled "The Golden Age", Ex-

hibit S-3, makes us reluctant to consider it the preaching of the gospel of God as she contends.

There is no religious question here, nor is there any quarrel with the religious beliefs of the petitioner. It is the *canvassing* by petitioner (although allegedly done in furtherance of or because of her religious beliefs) which is subject to the proper exercise of police power in the interest of public welfare and order.

Conclusion.

For the reasons herein stated, the judgment of the court below should be affirmed.

Respectfully submitted,

MEYER Q. KESSEL,
Attorney for Respondent.

JOSEPH C. BRAELOW,
Of Counsel.

: P: 2,3,

SUPREME COURT OF THE UNITED STATES.

Nos. 11, 13, 18 and 29.—October Term, 1939.

11	Clara Schneider, Petitioner, *vs.* The State (Town of Irvington).	On Writ of Certiorari to the Court of Errors and Appeals of the State of New Jersey.
13	Kim Young, Appellant, *vs.* The People of the State of California.	On Appeal from the Appellate Department of the Superior Court of Los Angeles County, California.
18	Harold F. Snyder, Petitioner, *vs.* City of Milwaukee.	On Writ of Certiorari to the Supreme Court of the State of Wisconsin.
29	Elmira Nichols and Pauline Thompson, Appellants, *vs.* Commonwealth of Massachusetts.	On Appeal from the Superior Court, County of Worcester, Commonwealth of Massachusetts.

[November 22, 1939.]

Mr. Justice Roberts delivered the opinion of the Court.

Four cases are here, each of which presents the question whether regulations embodied in a municipal ordinance abridge the freedom of speech and of the press secured against state invasion by the Fourteenth Amendment of the Constitution.[1]

No. 13.

The Municipal Code of the City of Los Angeles, 1936, provides:

"Sec. 28.00. 'Hand-Bill' shall mean any hand-bill, dodger, commercial advertising circular, folder, booklet, letter, card, pamphlet,

[1] On account of the importance of the question we granted certiorari in two of the cases, and noted jurisdiction in the others.

sheet, poster, sticker, banner, notice or other written, printed or painted matter calculated to attract attention of the public."

"Sec. 28.01. No person shall distribute any hand-bill to or among pedestrians along or upon any street, sidewalk or park, or to passengers on any street car, or throw, place or attach any hand-bill in, to or upon any automobile or other vehicle."

The appellant was charged in the Municipal Court with a violation of Sec. 28.01. Upon his trial it was proved that he distributed handbills to pedestrians on a public sidewalk and had more than three hundred in his possession for that purpose. Judgment of conviction was entered and sentence imposed. The Superior Court of Los Angeles County affirmed the judgment.[2] That court being the highest court in the State authorized to pass upon such a case, an appeal to this court was allowed.

The handbill which the appellant was distributing bore a notice of a meeting to be held under the auspices of "Friends Lincoln Brigade" at which speakers would discuss the war in Spain.

The court below sustained the validity of the ordinance on the ground that experience shows littering of the streets results from the indiscriminate distribution of handbills.[3] It held that the right of free expression is not absolute but subject to reasonable regulation and that the ordinance does not transgress the bounds of reasonableness. *Lovell* v. *City of Griffin*, 303 U. S. 444, was distinguished on the ground that the ordinance there in question prohibited distribution anywhere within the city while the one involved forbids distribution in a very limited number of places.

No. 18.

An ordinance of the City of Milwaukee, Wisconsin, provides: "It is hereby made unlawful for any person . . . to circulate or distribute any circular, hand-bills, cards, posters, dodgers, or other printed or advertising matter . . . in or upon any sidewalk, street, alley, wharf, boat landing, dock or other public place, park or ground within the City of Milwaukee." . . . .

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[2] 3 Calif. App. Supp. 62; 85 Pac. (2d) 231.

[3] On the hand-bill were the words "Admission 25¢ and 50¢". The Superior Court adverted to these and said: "Whatever traffic in ideas the Friends Lincoln Brigade may have planned for the meeting, the cards themselves seem to fall within the classification of commercial advertising rather than the expression of one's views. But if this be so, our conclusion is not thereby changed."

The petitioner, who was acting as a picket, stood in the street in front of a meat market and distributed to passing pedestrians hand-bills which pertained to a labor dispute with the meat market, set forth the position of organized labor with respect to the market, and asked citizens t ref in from patronizing it. Some of the bills were thrown in the street by the persons to whom they were given and it resulted that many of the papers lay in the gutter and in the street. The police officers who arrested the petitioner and charged him with a violation of the ordinance did not arrest any of those who received the bills and threw them away. The testimony was that the action of the officers accorded with a policy of the police department in enforcement of the ordinance to the effect that, when such distribution resulted in littering of the streets, the one who was the cause of the littering, that is, he who passed out the bills, was arrested rather than those who received them and afterwards threw them away. The Milwaukee County court found the petitioner guilty and fined him. On appeal the judgment was affirmed by the Supreme Court.[4]

The court held that the purpose of the ordinance was to prevent an unsightly, untidy, and offensive condition of the sidewalks. It distinguished *Lovell* v. *City of Griffin, supra*, on the ground that the ordinance there considered manifestly was not aimed at prevention of littering of the streets. The court approved the administrative construction of the ordinance by the police officials and felt that this construction sustained its validity. The court said: "Unless and until delivery of the hand-bills was shown to result in a littering of the streets their distribution was not interfered with."

No. 29.

An ordinance of the City of Worcester, Massachusetts, provides: "No person shall distribute in, or place upon any street or way, any placard, handbill, flyer, poster, advertisement or paper of any description."

The appellants distributed in a street leaflets announcing a protest meeting in connection with the administration of State unemployment insurance. They did not throw any of the leaflets on

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[4] — Wis. —; 283 N. W. 301.

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the sidewalk or scatter them. Some of those to whom the leaflets were handed threw them on the sidewalk and the street, with the result that some thirty were lying about.

The appellants were arrested and charged with a violation of the ordinance. The Superior Court of Worcester County rendered a judgment of conviction and imposed sentence. The Supreme Judicial Court overruled exceptions.[5] That court held the ordinance a valid regulation of the use of the streets and sought thus to distinguish it from the one involved in *Lovell* v. *City of Griffin, supra*, which the court said was not such a regulation. Referring to the ordinance the court said: "It interferes in no way with the publication of anything in the city of Worcester, except only that it excludes the public streets and ways from the places available for free distribution. It leaves open for such distribution all other places in the city, public and private."

No. 11.

An ordinance of the Town of Irvington, New Jersey, provides: "No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge of Police Headquarters." It further enacts that a permit to canvass shall specify the number of hours or days it will be in effect; that the canvasser must make an application giving his name, address, age, height, weight, place of birth, whether or not previously arrested or convicted of crime, by whom employed, address of employer, clothing worn, and description of project for which he is canvassing; that each applicant shall be fingerprinted and photographed; that the Chief of Police shall refuse a permit in all cases where the application, or further investigation made at the officer's discretion, shows that the canvasser is not of good character or is canvassing for a project not free from fraud; that canvassing may only be done between 9 A. M. and 5 P. M.; that the canvasser must furnish a photograph of himself which is to be attached to the permit; that the permittee must exhibit the permit to any police officer or other person upon re-

[5] Mass. Adv. 1938, 1969; 18 N. E. (2d) 166.

quest, must be courteous to all persons in canvassing, must not importune or annoy the town's inhabitants or conduct himself in an unlawful manner and must, at the expiration of the permit, surrender it at police headquarters. Persons delivering goods, merchandise, or other articles in the regular course of business to the premises of persons ordering, or entitled to receive the same, are exempted from the operation of the ordinance. Violation is punishable by fine or imprisonment.

The petitioner was arrested and charged with canvassing without a permit. The proofs show that she is a member of the Watch Tower Bible and Tract Society and, as such, certified by the society to be one of "Jehovah's Witnesses". In this capacity she called from house to house in the town at all hours of the day and night and showed to the occupants a so called testimony and identification card signed by the society. The card stated that she would leave some booklets discussing problems affecting the person interviewed; and that, by contributing a small sum, that person would make possible the printing of more booklets which could be placed in the hands of others. The card certified that the petitioner was an ordained minister sent forth by the society, which is organized to preach the gospel of God's kingdom, and cited passages from the Bible with respect to the obligation so to preach. The petitioner left, or offered to leave, the books or booklets with the occupants of the houses visited. She did not apply for, or obtain, a permit pursuant to the ordinance because she conscientiously believed that so to do would be an act of disobedience to the command of Almighty God.

The petitioner was convicted in the Recorder's Court. The Court of Common Pleas affirmed the judgment. On a further appeal the Supreme Court affirmed.[6] The Court of Errors and Appeals affirmed the judgment of the Supreme Court.[7]

The Supreme Court held that the petitioner's conduct amounted to the solicitation and acceptance of money contributions without a permit, and held the ordinance prohibiting such action a valid regulation, aimed at protecting occupants and others from disturbance and annoyance and preventing unknown strangers from visiting houses by day and night. It overruled the petitioner's contention that the measure denies or unreasonably restricts freedom

[6] 120 N. J. Law, 460.
[7] 121 N. J. Law, 542.

of speech or freedom of the press. The Court of Errors and Appeals thought *Lovell* v. *City of Griffin, supra,* not controlling, since the ordinance in that case prohibited all distribution of printed matter and was not limited to ways which might be regarded as consistent with the maintenance of public order or as involving disorderly conduct, molestation of inhabitants, or misuse or littering of the streets, whereas the ordinance here involved is aimed at canvassing or soliciting, subjects not embraced in that condemned in the *Lovell* case. The Court said: "A municipality may protect its citizens against fraudulent solicitation and, when it enacts an ordinance to do so, all persons are required to abide thereby. The ordinance in question was evidently designed for that purpose" . . .

The freedom of speech and of the press secured by the First Amendment against abridgment by the United States is similarly secured to all persons by the Fourteenth against abridgment by a state.[8]

Although a municipality may enact regulations in the interest of the public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion.

Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of

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[8] Gitlow v. New York, 268 U. S. 652; Whitney v. California, 274 U. S. 357; Stromberg v. California, 283 U. S. 359; Grosjean v. American Press Co., 297 U. S. 233; DeJonge v. Oregon, 299 U. S. 353; Herndon v. Lowry, 301 U. S. 242; Lovell v. Griffin, 303 U. S. 444. There is no averment or proof in any of the cases that the appellants or petitioners are citizens of the United States, and in the *Young* case, No. 13, the applicable provisions of the municipal code were challenged on the sole ground that they infringed the due process clause of the Fourteenth Amendment. Cf. New York ex rel. Cohn v. Graves, 300 U. S. 308, 317; Northwestern Bell Telephone Co. v. Nebraska State Ry. Comm., 297 U. S. 471 at 473.

distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion.

This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties.[9] The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.

In *Lovell* v. *City of Griffin*, *supra*, this court held void an ordinance which forbade the distribution by hand or otherwise of literature of any kind without written permission from the city manager. The opinion pointed out that the ordinance was not limited to obscene and immoral literature or that which advocated unlawful conduct, placed no limit on the privilege of distribution in the interest of public order, was not aimed to prevent molestation of inhabitants or misuse or littering of streets, and was without limitation as to time or place of distribution. The court said that, whatever the motive, the ordinance was bad because it imposed penalties for the distribution of pamphlets, which had become historical weapons in the

[9] Grosjean v. American Press Co., *supra*, p. 244; DeJonge v. Oregon, *supra*, p. 364; Lovell v. City of Griffin, *supra*, p. 450.

defense of liberty, by subjecting such distribution to license and censorship; and that the ordinance was void on its face, because it abridged the freedom of the press. Similarly in *C. I. O.* v. *Hague*, — U. S. —, an ordinance was held void on its face because it provided for previous administrative censorship of the exercise of the right of speech and assembly in appropriate public places.

The Los Angeles, the Milwaukee, and the Worcester ordinances under review do not purport to license distribution but all of them absolutely prohibit it in the streets and, one of them, in other public places as well.

The motive of the legislation under attack in Numbers 13, 18 and 29 is held by the courts below to be the prevention of littering of the streets and, although the alleged offenders were not charged with themselves scattering paper in the streets, their convictions were sustained upon the theory that distribution by them encouraged or resulted in such littering. We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.

It is argued that the circumstance that in the actual enforcement of the Milwaukee ordinance the distributor is arrested only if those who receive the literature throw it in the streets, renders it valid. But, even as thus construed, the ordinance cannot be enforced without unconstitutionally abridging the liberty of free speech. As we have pointed out, the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution.

It is suggested that the Los Angeles and Worcester ordinances are valid because their operation is limited to streets and alleys and leaves persons free to distribute printed matter in other public places. But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one

is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.

While it affects others, the Irvington ordinance drawn in question in No. 11, as construed below, affects all those, who, like the petitioner, desire to impart information and opinion to citizens at their homes. If it covers the petitioner's activities it equally applies to one who wishes to present his views on political, social or economic questions. The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. It is not a general ordinance to prohibit trespassing. It bans unlicensed communication of any views or the advocacy of any cause from door to door, and permits canvassing only subject to the power of a police officer to determine, as a censor, what literature may be distributed from house to house and who may distribute it. The applicant must submit to that officer's judgment evidence as to his good character and as to the absence of fraud in the "project" he proposes to promote or the literature he intends to distribute, and must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting. In the end, his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion.

As said in *Lovell* v. *City of Griffin, supra,* pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others

may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. Nor do we hold that the town may not fix reasonable hours when canvassing may be done by persons having such objects as the petitioner. Doubtless there are other features of such activities which may be regulated in the public interest without prior licensing or other invasion of constitutional liberty. We do hold, however, that the ordinance in question, as applied to the petitioner's conduct, is void, and she cannot be punished for acting without a permit.

The judgment in each case is reversed and the causes are remanded for further proceedings not inconsistent with this opinion.

So ordered.

Mr. Justice McREYNOLDS is of opinion that the judgment in each case should be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.